



A. JOSEPH De NUCCI
AUDITOR

AUDITOR OF THE COMMONWEALTH

10 WEST STREET, 6TH FLOOR
BOSTON, MASSACHUSETTS 02111

TEL (617) 727-0980
(800) 462-COST
FAX (617) 727-0984

August 4, 2003

Mr. Philip A. Dinsky
Chairman
Framingham School Committee
454 Water Street
Framingham, MA 01701-7699

RE: AN ACT RELATIVE TO THE TEACHING OF ENGLISH IN PUBLIC SCHOOLS: St. 2002, c. 386

Dear Mr. Dinsky:

Auditor DeNucci asked that I respond to your letter regarding the Local Mandate Law, G. L. c. 29, s. 27C, and the above-captioned Act, the so-called English Immersion Law. Specifically, you asked that this law not be implemented until the Commonwealth provides funds to assume compliance costs for fiscal years 2004 and 2005. Please be advised, however, that the Office of the State Auditor does not have the authority to suspend operation of any state law; that type of authority is vested only in the judicial branch of government. Rather, it is the role of the State Auditor's Division of Local Mandates (DLM) to issue an opinion as to whether the Local Mandate Law applies in a given case, and to determine the amount of the cost imposed on any locality by the state law or regulation at issue. Accordingly, this letter sets out the opinion of DLM that the Local Mandate Law does not apply to the English Immersion Law, because it was enacted through the citizens' initiative process provided by Article 48 of the Amendments to the State Constitution. The following discussion further explains this opinion, and describes some potential funding sources that may be available for the immersion program, regardless of the local Mandate Law.

In relevant part, the Local Mandate Law provides that any post-1980 law that imposes additional costs upon any city or town will be effective only if locally accepted, "*...unless the general court, at the same session in which such law is enacted, provides by general law and by appropriation...*" for state assumption of the additional cost. G. L. c. 29, s. 27C(a) (Emphasis added.) However, a municipality may not unilaterally decide not to comply. A city or town aggrieved by such a law may petition the superior court for an exemption from compliance. In such a proceeding, DLM's determination of the amount of the cost imposed by the Commonwealth shall be prima facie evidence of the amount of state funding necessary to sustain the mandate.

The italicized text above is the primary basis for DLM's opinion in this case: the Local Mandate Law does not apply to the English Immersion Law, because it was not enacted in a session of the General Court. Note that legislation to enact the English Immersion Law was originally filed with the General Court, but that body did not vote on the petition before a deadline related to the citizen's initiative process. In the legislative process, such failure to act is tantamount to rejection. As a result, supporters of the measure collected additional signatures to have the matter placed on the November 2002 state election

ballot as Question 2 for a decision by the voters. Since the voters at the state election enacted the English Immersion Law, it was not enacted in a session of the General Court.

The state Supreme Judicial Court has recognized that the Local Mandate Law does not apply to “mandated costs or services which were not initiated by the Legislature and over which it has no control.” (*Town of Lexington vs. Commissioner of Education*, 393 Mass. 693, 697 (1985). (The Court was referring to the G. L. c. 29, s. 27C(g) exception for costs resulting from court decisions, or from laws enacted as a direct result of court decisions.) In the case at hand, the Legislature declined to approve the English Immersion legislation, and the people enacted the law notwithstanding the inclination of the Legislature. From this viewpoint, the English Immersion Law is a matter over which the General Court had no control, like court decisions and federal enactments. Accordingly, it is our opinion that the Local Mandate Law does not apply to the English Immersion Law.

Nonetheless, we are aware of a number of existing and potential financial resources to support the \$200,000 estimated cost of making the transition to English Immersion programs. The Massachusetts Department of Education (DOE) informs us that Framingham will receive funding for English language acquisition programs under the No Child Left Behind Act of 2001 (NCLB), which amends and reauthorizes the Elementary and Secondary Education Act (ESEA). Framingham Public Schools will receive \$251,144 for FY 2004, under a NCLB Title III grant: “English Language Acquisition and Academic Achievement Program for Limited English Proficient Students” (Fund Code 180). This is an entitlement grant that is based on the number of limited English proficient students. Framingham may also be eligible for a Competitive Immigrant Grant (Fund Code 185), and the Refugee Children Impact Grant (Fund Code 800). The DOE also provides NCLB financial assistance with student and teacher assessments and training programs.

The Department of Education estimates that state Chapter 70 aid provided \$651,902 to Framingham’s bilingual programs in FY 2002 (latest data available). Comparable aid levels are expected to continue in support of English language learner instruction in FY 2004 (minus any reduction due to the state revenue shortfall) and beyond. Further, Section 210 of the FY 2004 state budget will allow Framingham to maintain its two-way bilingual programs, providing additional programmatic flexibility.

In closing, I regret that the outcome of our review is not positive for the Town of Framingham. However, this opinion does not prejudice your right to seek direct judicial review of the matter under G. L. c. 29, s. 27C(e). Please contact Emily Cousens, Legal Counsel for the Division of Local Mandates, with any questions or comments you may have on this or other matters impacting your school district.

Sincerely,

A handwritten signature in blue ink, appearing to read "John W. Parsons", is written over a faint, larger blue ink signature that appears to read "John W. Parsons".

John W. Parsons
DEPUTY AUDITOR, GENERAL COUNSEL

JWP/gm

cc: Senator David P. Magnani
Representative Deborah D. Blumer
Representative Karen Spilka
David P. Driscoll, Commissioner of Education
Superintendent Christopher Martes, Ed. D.